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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,939	03/01/2002	Jean-Louis H. Gueret	08048.0027-00	8280

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
901 NEW YORK AVENUE, NW  
WASHINGTON, DC 20001-4413

EXAMINER
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DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/084,939

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-297 is/are pending in the application.  
4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1, 3-4, 6-7, 15-19, 21-31, 33-37, 45-49, 51-61, 64-67, 75-79, 81-91, 93-96, 104-108, 110-120, 122-126, 134-138, 140-150, 152-156, 164-168, 170-180, 182, 183-186, 194-198, 200-210, 212-216, 224-228, 230-239, 264 and 293 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/12/02; 08/05/02  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 2, 5, 8-14, 20, 32, 38-4, 50, 62-63, 68-73, 80, 92, 97-103, 109, 121, 127-133, 139, 151, 157-163, 167-169, 181, 187-193, 211, 217-223, 229, 240-263, 265-292, 294-297 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 06/16/05.

Also, claim 74 depends on a non-elected claim 73, therefore claim 74 is withdrawn from further consideration. Claim 199 is directed to a non-elected species, therefore claim 199 is also withdrawn from further consideration.

Applicant's election without traverse of claims 1, 3-4, 6-7, 15-19, 21-31, 33-37, 45-49, 51-61, 64-67, 75-79, 81-91, 93-96, 104-108, 110-120, 122-126, 134-138, 140-150, 152-156, 164-168, 170-180, 182, 183-186, 194-198, 200-210, 212-216, 224-228, 230-239, 264 and 293 in the reply filed on 06/16/05 is acknowledged.

### ***Claim Objections***

Claim 21 duplicates claim 15; claim 150 duplicates claim 120.

Claims 19, 49, 79, 108, 198 and 228 are objected to because of the following informalities: the above claims are not being in a complete sentence claim (see similar claim 168 in a complete sentence). Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 15-19, 21-24, 26-31, 45-49, 51-54, 56-60, 210, 233, 235-238, 264 and 293 are rejected under 35 U.S.C. 102(e) as being anticipated by Vasas (6237609).

With regard to claims 1, 15-19, 21-24, 26-31, 45-49, 51-54, 56-60, 210, 233, 235-238, 264 and 293, Vasas discloses a mascara brush (figs. 1-3) comprising a brush (10), a reservoir (14) containing a mascara product, a wiper (24) and the brush having a cap (26). The brush further comprising a core (40) curved along at least a portion of its length so that an axis of the core defining a curve in a plane of curvature, the curve having a convex side and a concave side (fig. 3), a plurality of bristles (50) connected to the core, the bristles having ends defining an envelope surface and defining a cross-section of the brush that varies over at least a portion of the length of the core in a manner that is not geometrically similar (fig. 5), wherein the cross-section of the brush at at least one position along the length of the core is substantially asymmetrical (fig. 2) in relation to a plane perpendicular to the plane of curvature, wherein the core passes through the center of the cross-section 9fig. 2) of the brush at at least one location along

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the length of the core. The core having a twisted wire core (fig. 3) having one a left-hand pitch and a right-hand pitch, the brush also having a stem (30) connected to the core and having an axis, the stem being located at one end of the core, the core having a left-hand pitch and being curved in a manner so as to decrease inclination of helical sheets formed by ends of the bristles relative to the axis of the stem in a direction facing away from the stem (fig. 5); the core being located off-center (fig. 7) in the cross-section of the brush over at least a portion of the length of the brush and wherein the bristles having different lengths (fig. 3) and wherein the bristles having longer bristles with ends defining an envelope surface and shorter bristles contained within a volume defining the envelope surface. In regard to the method claims, Vasas discloses the claimed method steps.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25, 55, 234 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasas.

With regard to claims 25, 55 and 234, Vasas discloses a brush comprising all the claimed limitations in claims 1, 31 and 210 as discussed above except for the product

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being a hair product. It would have been an obvious matter of design choice to employ the hair product since such a modification would involve a routine skill in the art.

Claims 1, 3-4, 6-7, 31, 33-37, 61, 64-67, 75-79, 81-89, 91, 93-96, 104-108, 110-120, 122-126, 134-138, 140-149, 150, 152-156, 164-168, 170-173, 175-179, 210, 212-216, 224-228, 230-233, 235-239 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (5853011) in view of Vasas.

With regard to claims 1, 3-4, 6-7, 31, 33-37, 61, 64-67, 75-79, 81-89, 91, 93-96, 104-108, 110-120, 122-126, 134-138, 140-149, 150, 152-156, 164-168, 170-173, 175-179, 210, 212-216, 224-228, 230-233, 235-239, Gueret discloses a mascara brush (figs. 1-9) comprising a brush (201), a reservoir (220) containing a mascara product, a wiper (221) and the brush having a cap (223). The brush further comprising a core (2), a plurality of bristles (4) connected to the core, wherein when the core is straightened, ends of bristles defines at least one notch (7) having a maximum width located between ends of the notch spaced apart from one another along the length of the brush; the notch is concave and partially cylindrical about an axis perpendicular to an axis of the core; the brush also having a stem (222) with an end portion connected to the core and the end portion of the stem defining an axis. Gueret does not disclose the core being curved as claimed, however, Vasas as discussed above disclosed the invention essentially as claimed. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the curve core as taught by Vasas for maximizing application and combing functions and matching the curve of an eyelid.

Claims 85, 114, 144, 174 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Vasas.

With regard to claims 85, 114, 144, 174, Gueret in view Vasas disclose a brush comprising all the claimed limitations in claims 61, 91, 120, 150 as discussed above except for the product being a hair product. It would have been an obvious matter of design choice to employ the hair product since such a modification would involve a routine skill in the art.

Claims 180, 182-186, 195-198, 200-203, 205-209 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Kingsford (5137038).

With regard to claims 180, 182-186, 195-198, 200-203, 205-209, Gueret discloses the invention essentially as claimed except for the brush having a free end being not aligned with the axis of the end portion of the stem. Kingsford discloses a mascara brush (fig. 2) comprising a brush (3) with a free end portion, a stem (2) with an end portion defining an axis and the free end of the brush being not aligned with the axis of the end portion of the stem (fig. 4). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular brush as taught by Kingsford into the brush of Gueret for the purpose of maximizing application and combing functions.

Claim 204 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Kingsford.

With regard to claim 204, Gueret in view of Kingsford disclose a brush comprising all the claimed limitations in claim 180 as discussed above except for the product being a hair product. It would have been an obvious matter of design choice to employ the hair product since such a modification would involve a routine skill in the art.

Claim 194 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Kingsford as applied to claim 180 above, and further in view of Vasas.

With regard to claim 194, Gueret in view of Kingsford disclose the invention essentially as claimed except for the core being located off-center in the cross-section of the brush over at least a portion of the length of the brush. Vasas as discussed above disclosed the invention essentially as claimed. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular core as taught by Vasas for the intended use purpose.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smith is cited to show the state of the art with respect to a curve core brush.

The drawings filed 03/01/02 have been approved by the Examiner.



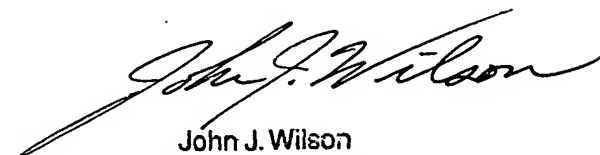
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
September 8, 2005



John J. Wilson  
Primary Examiner

Continuation of Disposition of Claims: Claims withdrawn from consideration are 2,4,5,8-14,20,32,38,50,62,63,68-74,80,92,97-103,109,121,127-133,139,151,157-163,167-169,181,187-193,199,211,217-223,229,240-263,265-292 and 294-297.